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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5582-N-01]

**Clarification of Duplication of Benefits Requirements under the Stafford Act for
Community Development Block Grant (CDBG) Disaster Recovery Grantees**

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice clarifies the duplication of benefits requirements under the Stafford Act for all active Community Development Block Grant (CDBG) disaster recovery grants, and all future CDBG disaster recovery grants.

DATES: Effective Date: November 21, 2011

FOR FURTHER INFORMATION CONTACT: Scott Davis, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Davis at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Applicability

II. Background

III. Applicable Law

A. Stafford Act

B. OMB Circular A-87

IV. Framework for Determining CDBG Disaster Recovery Assistance

A. Assessment of Need Prior to Assistance

B. Total Assistance

C. Non-Duplicative Assistance Excluded from Final Benefit calculation

1. Funds for a Different Purpose

2. Funds for Same Purpose, Different Eligible Use

3. Funds Not Available to the Applicant

4. Private Loans

5. Other Assets or Lines of Credit

D. Calculate CDBG Disaster Recovery Award

E. Unmet Need

V. Examples Using Framework

VI. Use of CDBG Funds

A. Use of Funds for Explicit and Eligible Purposes

B. Treatment of Small Business Administration Loans

VII. Collecting a Duplication

I. Applicability

The guidance presented in this Notice is applicable to all active HUD CDBG disaster recovery grants, and will be incorporated by reference into Federal Register notices governing all future CDBG disaster recovery grants. Table 1, below, illustrates the active grants next to the

pertinent appropriation law. The following guidance is applicable to all new programs initiated and submitted to HUD in an Action Plan Amendment subsequent to the date of this Notice.

Table 1: Active CDBG Disaster Recovery Grants

<i>Appropriation Law</i>	<i>Date Enacted</i>	<i>Grantee</i>
Public Law 107-73	November 26, 2001	State of New York
Public Law 107-117	January 10, 2002	State of New York
Public Law 107-206	August 2, 2002	State of New York
Public Law 108-324	October 13, 2004	States of Alabama, California, Florida, Maryland, North Carolina, Ohio, Pennsylvania, Puerto Rico, and West Virginia, Virginia
Public Law 109-148	December 30, 2005	States of Alabama, Florida, Louisiana, Mississippi, and Texas
Public Law 109-234	June 15, 2006	States of Alabama, Florida, Louisiana, Mississippi, and Texas
Public Law 110-116	November 13, 2007	State of Louisiana
Public Law 110-252	June 30, 2008	States of Arkansas, Colorado, Illinois, Indiana, Iowa, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, Oklahoma, South Dakota, West Virginia, and Wisconsin
Public Law 110-329	September 30, 2008	States of Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Puerto Rico, Tennessee, Texas, and Wisconsin
Public Law 111-212	July 29, 2010	States of Kentucky, Rhode Island, and Tennessee; City of Cranston, City of Warwick, City of Memphis, Nashville-Davidson County, and Shelby County

This guidance applies to all CDBG disaster recovery expenditures, programs, and activities, regardless of whether a grantee or subgrantee administers a program. Although this Notice frequently references the term grantee, the actions described are not limited solely to grantees. Rather, it is ultimately the grantee's responsibility to ensure no recipient of funds under its CDBG disaster recovery award has received a duplicate benefit.

This Notice does not apply to any funds received annually under the State CDBG program, or the CDBG Entitlement program, unless those funds have specifically been awarded by the grantee for disaster recovery purposes. All uses of the term "CDBG" in this Notice refer to CDBG disaster recovery allocations.

II. Background

Grantees have requested clarification from HUD regarding the duplication of benefits. This Notice provides information to ensure all active CDBG disaster recovery grantees are in compliance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. §§ 5121-5207), as amended, (Stafford Act), and all future CDBG disaster recovery grantees address duplication of benefits issues consistently. This Notice was also developed in consultation with the Small Business Administration (SBA) and the Federal Emergency Management Agency (FEMA).

Most of the CDBG disaster recovery supplemental appropriation laws to date have explicitly required the Secretary of Housing and Urban Development to establish procedures to prevent recipients from receiving any duplication of benefits. In addition, most supplemental appropriation laws also require the Secretary to report quarterly to the Committees on Appropriations with regard to all steps taken to prevent fraud, abuse of funds, and duplication of

benefits. Even in the absence of these specific requirements, Stafford Act prohibition on duplication of benefits in section 312 (42 U.S.C. § 5155) is applicable to all CDBG disaster recovery grants.

HUD has instituted specific reporting, written procedures, monitoring, and internal audit requirements for each grantee to ensure compliance with program rules for CDBG disaster recovery awards, including rules related to prevention of fraud, abuse, and duplication of benefits. However, HUD has neither designed nor mandated a specific process or method by which grantees must evaluate duplication of benefits; grantees have been encouraged to develop policies and procedures appropriate to their individualized programs. The Department has consistently monitored CDBG disaster recovery grantees to ensure that they are meeting the above requirements and that their policies and procedures are adequately preventing duplication of benefits.

III. Applicable Law

Two authorities form the foundation of duplication of benefit inquiries—the Stafford Act and applicable “necessary and reasonable cost principles in 24 CFR part 570 and in OMB Cost Circulars (codified in title 2 of the Code of Federal Regulations). Supplemental appropriations statutes often reinforce and supplement these authorities.

A. The Stafford Act. The Stafford Act directs administrators of federal assistance to ensure that no “person, business concern or other entity” will receive duplicative assistance and imposes liability “to the extent such assistance duplicates benefits available to the person for the same purpose from another source.” 42 U.S.C. § 5155(a) and (c). Because assistance to each person varies widely based on individual insurance coverage and eligibility for Federal funding, grantees cannot comply with the Stafford Act without completing a duplication of benefits

analysis specific to each applicant. The Stafford Act provides the framework for the federal government's role in preparing for and recovering from a disaster. Its duplication of benefits requirements apply to all federal agencies administering a disaster recovery program providing financial assistance, including CDBG disaster recovery grants. Under the Act's framework, Congress instituted a goal to achieve greater coordination and responsiveness of disaster preparedness and relief programs. 42 U.S.C. § 5121.

It also sought to guard against fraud and ineligible uses of taxpayers' funds. The President makes major disaster declarations only when "response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary." (42 U.S.C. § 5170). Similarly, the prohibition on duplication of benefits ensures that federal assistance serves only "to supplement insurance and other forms of disaster assistance." To accomplish these goals, the Stafford Act implies a hierarchy of funding (see section VII of this notice: Collecting a Duplication), and prohibits federal agencies from providing recovery assistance to the extent another source has covered the same portion of that recovery need.

Specifically, section 312 of the Stafford Act prohibits any person, business concern, or other entity from receiving "any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source." 42 U.S.C. § 5155(a). A duplication occurs when a beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of need.

The Stafford Act requires a fact-specific inquiry into assistance received by each person, household, or entity. A grantee may not make a blanket determination that a duplication of benefits does not exist for all beneficiaries or recipients under a disaster recovery program. As a

result, all disaster recovery funds must be governed by policies and procedures to prevent duplication of benefits.

In disaster recovery, it is common for multiple sources of funds to be used to address a single need. Grantees are advised to coordinate program designs and choices with related funding sources. Together, grantees and funders can determine the best approaches to minimize or eliminate duplication, increase leverage, and maximize community and individual outcomes. Furthermore, the Stafford Act provides that receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional federal assistance for any part of a loss or need for which benefits have not been provided. 42 U.S.C. § 5155(b). Thus, to comply with the Stafford Act, grantees should ensure that each program provides assistance to a person or entity only to the extent that the person or entity has a disaster recovery need that has not been fully met. Any recipient receiving a duplicate benefit may be liable to the federal government. 42 U.S.C. § 5155(c).

B. Necessary and Reasonable Cost Principles. Cost principles applicable to all CDBG disaster recovery grantees require that costs are necessary and reasonable. These federal cost principles are described in OMB Circulars and codified in title 2 of the Code of Federal Regulations. HUD grantees and subrecipients must generally adhere to the cost principles applicable to the specific type of entity (2 CFR part 225 (OMB Circular A-87), Cost Principles for State, Local, and Indian Tribal Governments, 2 CFR part 230 (OMB Circular 122), Cost Principles for Non-profit Organizations, 2 CFR part 220 (OMB Circular A-21), Cost Principles for Educational Institutions, or 45 CFR part 74, Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals, as applicable). State grantees are subject to 24 CFR 570.489(d), which requires that states shall have fiscal and

administrative requirements which ensure that funds received are only spent “for reasonable and necessary costs of operating programs.”

Federal necessary and reasonable cost principles apply to:

- State grantees (and their state recipients) through 24 CFR 570.489(d);
Subrecipients of state grantees according to CDBG disaster recovery Notices,
which typically require subrecipient agreements to comply with 24 CFR 570.503;
and
- Local government grantees receiving CDBG disaster recovery grants directly
from HUD (and their subrecipients) through 24 CFR 570.610.

Section 570.489(d) of Title 24 Code of Federal Regulations and the federal cost principles applicable to all types of entities include reasonability requirements that prohibit costs that have already been or will be paid from another source. For example, principles and standards established by 2 CFR part 225 (OMB Circular A-87), Cost Principles for State, Local, and Indian Tribal Governments, state that a cost assigned to a grant must be "necessary and reasonable for proper and efficient performance and administration of Federal awards." 2 CFR part 225, Appendix A (C)(1)(a). A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made. Other factors related to the reasonableness of the cost are described in the basic guidelines in 2 CFR part 225, Appendix A (C)(2). This requirement applies to a grantee's costs in administering its disaster recovery program, as well as the ultimate uses of the funds by the grantee.

Grantees must also make decisions about which types and amounts of cost items are necessary and reasonable given the applicable federal laws, terms, and conditions of the federal

award, or other governing regulations. In the context of the Stafford Act duplication of benefits provision, the grantee must conduct an individualized review of each beneficiary and the purpose for which CDBG disaster recovery funds are provided. Specifically, the grantee must determine whether a cost is necessary and reasonable; if a cost has already been or will be paid from another source, it is presumed to violate the necessary and reasonable standard.

IV. Framework for Determining CDBG Disaster Recovery Assistance

The paragraphs in this section of this Notice illustrate the primary considerations that must be taken into account when analyzing need and duplication of benefits under CDBG disaster recovery. While the Department is providing a suggested framework, grantees have the discretion to develop other methods or procedures to evaluate and address the calculation of need and assessment of duplication of benefits. Grantees are required to establish a duplication of benefits policy that explains and describes all methods and procedures to prevent the duplication of benefits. 42 U.S.C. § 5155(a).

Although the potential for duplication of benefits arises most frequently under homeowner rehabilitation programs, it is not limited solely to that program type. Therefore, this Notice seeks to provide general, cross-cutting guidance that can apply to any program.

A grantee that creates several disaster recovery programs should consider whether one program will duplicate assistance provided by another program, even when the secondary program is funded entirely with non-federal funds.

A. Assessment of need prior to assistance. A grantee should first determine the applicant's total post-disaster need in the absence of any duplicative benefits or program caps. Following the identification of total need, duplicative assistance can later be subtracted and

program caps applied to arrive at a final award. A rebuilding project's cost estimate is often able to serve as the best demonstration of need.

Some recovery programs not involved with physical rebuilding, such as economic development to provide an affected business with working capital, may not necessarily base awards on construction cost estimates. In such scenarios, the potential award may be determined by the program and be guided by standard underwriting principles; however, it must still be determined to be cost reasonable.

B. Total assistance available to the person or entity. Assistance includes all benefits available to the person, including cash and other resources such as insurance proceeds, grants, and SBA loans (private loans not guaranteed by SBA are excepted -- see paragraph C). Grantees should identify all assistance received by each person, business concern, or other entity, via insurance, FEMA, SBA, other local, state, or Federal programs, and private or nonprofit charity organizations. See, FEMA Disaster Assistance Policy 9525.3, Duplication of Benefits—Non-Government Funds.

Grantees should also identify reasonably anticipated assistance, such as future insurance claims or approved SBA loan proceeds. Reasonably anticipated funds include assistance that has been awarded, but has not yet been received. For example, assume a business was approved to receive an SBA loan for \$30,000, but had only received \$20,000 when it applied for CDBG disaster recovery assistance for the same purpose. The grantee should identify the full amount of assistance for which the applicant was approved (\$30,000).

Funds are not reasonably anticipated when the source and/or amount is indefinite, or the applicant is unaware that he/she may be eligible to receive additional funds at a later date. To address any potential duplication, beneficiaries must enter a signed agreement to repay any

assistance later received for the same purpose as the CDBG disaster recovery funds. The grantee must identify a method to monitor compliance with the agreement for a reasonable period, and should articulate this method in its written administrative procedures. Please note that if additional need is established, subsequent funds would not be considered a duplication. See paragraph E, Unmet Need, for more information on this issue.

C. Non-duplicative assistance excluded from final benefit calculation. Once the grantee has determined the potential award and the total assistance received or to be received, it can exclude for duplication of benefit purposes, assistance that was: (1) provided for a different purpose; (2) used for a different, eligible purpose; (3) not available to the applicant; (4) a private loan not guaranteed by SBA; or (5) any other asset or line of credit available to the applicant. Below, each of these categories is explained in greater detail.

1. Funds for a different purpose. Any funds provided for a different purpose, or a general, non-specific purpose (*e.g.*, “disaster relief/recovery”), may be excluded from the final award calculation if they were not used by the applicant for the same purpose.

Funds provided to a homeowner typically fall under one of the following categories: replacement housing, rehabilitation assistance, or interim (*i.e.* temporary) housing. Funds provided for replacement housing are generally easy to identify—they assist an individual or household to secure a replacement home in the event their disaster-affected home cannot be rehabilitated. This includes, but is not limited to, downpayment assistance, interim mortgage assistance, and acquisition of the damaged property. While these types of funds may be delivered through separate programs, they all have a uniform purpose—to equip an individual or household with the funds necessary to gain replacement housing.

Rehabilitation includes repair and reconstruction. If a homeowner receives rehabilitation funds from CDBG disaster recovery, all other assistance provided to address that home's rehabilitation must be included. If award amounts are related to a property's value or estimated cost of repair/reconstruction, then HUD will consider them to be for the purpose of rehabilitation or replacement housing.

Funds provided for interim housing, which would be provided if a household is temporarily unable to reside in its permanent residence, are considered to have a different purpose than rehabilitation or replacement housing. For example, if FEMA funds were eligibly used for interim housing, and CDBG funds were provided for home rehabilitation, there is no duplication regarding those funds because the funds were provided for different purposes. However, any FEMA funds eligibly used for housing replacement or rehabilitation must be considered for that purpose.

Economic development programs may address many unique purposes. Thus, for a more effective administration of these programs, each should be carefully designed from the beginning with clear, identified purposes of the funds.

Finally, when providing funds for the repair, replacement, rehabilitation, or new construction of public facilities or improvements, a grantee must address whether other sources of funds are available for that same purpose and for that specific project because funds used directly by grantees and other government entities for public facilities or other purposes are also subject to the duplication of benefits prohibitions under the Stafford Act.

2. Funds for same purpose, different eligible use. Funds used for a different eligible purpose may be excluded from the final award calculation. In some instances, funds provided for the same general purpose as the CDBG disaster recovery funds will have been used by the

applicant for a different specific eligible purpose. In these circumstances, if the applicant can document that the funds received were used for a different, eligible purpose, then the funds are not duplicative. Each grantee can work with HUD to determine what documentation is appropriate. In general, acceptable documentation may include, but is not limited to, receipts as well as sworn statements and certifications that can be verified or substantiated. FEMA requires individuals to keep receipts or bills for three years to demonstrate how all FEMA-funded assistance was used in meeting an eligible, disaster related need. It is advisable for grantees to remind applicants of this requirement when submitting an application for CDBG assistance that supplements FEMA assistance already received.

Whether the funds are used for an eligible purpose is dependent upon the program that provided the funds. For example, assume a grantee is administering a homeowner rehabilitation program and an applicant to the program previously received housing assistance from FEMA. If the applicant can document that the FEMA funds were used for eligible interim housing costs (such as rent, in accordance with FEMA program eligibility), and not housing replacement or rehabilitation (which may also be an eligible use of the funds), then his or her CDBG award for permanent housing should not be reduced by the amount of FEMA assistance used for interim housing. Because FEMA may allow its recovery funds to be used for multiple purposes, CDBG disaster recovery funds may not duplicate the ultimate use of the FEMA funds.

Because grantees may not be familiar with other federal programs and allowable uses of funds, should this issue arise, grantees are encouraged to immediately contact their assigned HUD Community Planning and Development (CPD) Representative for further guidance.

This issue may also emerge when a grantee provides multiple homeowner rehabilitation or replacement housing programs, or multiple economic development programs. Thus, grantees are encouraged to clearly define the purpose and intended use of funds under each program.

3. Funds not available to the applicant. Funds that are not available to an applicant may also be excluded from the final award calculation. A benefit is available if a person or entity: (1) would receive it by acting in a commercially reasonable manner, or (2) has received it, and has legal control over it. Commercially reasonable efforts refer to efforts that use a standard of reasonableness defined by what a similar person would do as judged by the standards of the applicable community. Commercially reasonable efforts should be consistent with good faith business judgments. For example, it may be commercially reasonable for a person to elect to receive a lump sum insurance settlement based on estimated cost of repairs to avoid transaction costs associated with the alternative of receiving reimbursement based on actual replacement cost; any additional benefits that theoretically might have been received under another settlement option do not reduce eligibility for assistance.

Funds are not available to the person or entity if the person does not have legal control of the funds when they are received and are used for a non-duplicative purpose. For example, if a homeowner's mortgage requires any insurance proceeds to be applied to reduce the lien balance, then the bank/mortgage holder (not the homeowner) has legal control over those funds. Therefore, the homeowner is legally obligated to use insurance proceeds for that purpose and does not have a choice in using them for any other purpose, such as to rehabilitate the house. Under these circumstances, insurance proceeds do not reduce assistance eligibility. Alternatively, if a disaster-affected homeowner chooses to apply insurance proceeds to reduce an existing mortgage, or requests that the lender demand payment, insurance proceeds reduce the

amount of disaster assistance eligibility. In addition, if a mortgage requires insurance proceeds to be used for rehabilitation of the property, those proceeds must be considered as assistance for that purpose.

A homeowner does not need to possess cash assistance to be considered as being in legal control over receiving benefits for a particular purpose. For example, it is common for homeowners to choose to apply to local- or state-administered housing repair or reconstruction programs where the program administrator acts directly to complete the repairs for the homeowner. In this case, the person asks/applies for \$10,000 worth of repairs (for example) and the benefit they receive is \$10,000 in repair work to the home. The person does not need to have personally possessed the \$10,000 in order to be in legal control over receiving that benefit for that specific purpose.

4. Private loans. Similarly, for duplication of benefits purposes, private loans may be excluded from the final award calculation. Unlike SBA loans (or any other subsidized loan or federal loan guarantee program that provides assistance after a major disaster or emergency), private loans not guaranteed by SBA need not be considered duplicative assistance. Congress provided for SBA loans (both direct and guaranteed) as part of the overall statutory scheme for disaster recovery. As such, SBA loans are made pursuant to a government program. Since private loans are not provided under a government program, they do not need to be considered as potentially duplicative assistance. However, when making final award determinations, necessary and reasonable cost principles such as OMB Circular A-87 (2 CFR part 225) apply. While private loans need not be considered for duplication of benefit purposes, a grantee is not prohibited from considering loans for other purposes, such as underwriting. For purposes of this Notice, private loans are non-federal loans (neither direct nor guaranteed) that are made in a

commercial lending transaction for fair market rates with a willing borrower and willing lender, under standard commercial lending terms in which the borrower must repay the full amount of the loan (plus interest, if applicable). This includes private loans for construction and bridge financing, but not forgivable loans. This policy applies regardless of whether the borrower is a business or an individual.

5. Other assets or lines of credit. Other assets or lines of credit available to a homeowner or a business owner need not be included in the award calculation. This includes, but is not limited to: checking or savings accounts, stocks, bonds, mutual funds, pension or retirement benefits, credit cards, mortgages or lines of credit, and life insurance. Please note that these items may be held in the name of an individual, or in the name of a business.

D. Calculate CDBG disaster recovery award. The calculation may look as follows: (1) Identify total post-disaster need prior to any assistance; (2) Identify potentially duplicative assistance; (3) Subtract all assistance found to be duplicative, resulting in the maximum potential award amount, or unmet need.

E. Unmet need. Long-term recovery is a process, however, disaster recovery needs are calculated at points in time. As a result, a subsequent change in circumstances can affect need. If, after needs are initially calculated and/or a CDBG award has been made, an applicant for CDBG disaster recovery assistance can demonstrate a change in circumstances, such as vandalism, contractor fraud, an increase in the cost of materials and/or labor, a change in local zoning law or building code, or subsequent damage to a home or business that was partially repaired, the grantee may subsequently reevaluate the calculation of the award by taking into account the increased need. However, any reevaluation must be done before the initial need for which the assistance was granted has been fully met (e.g., before the damaged house is fully

repaired). In effect, once the house is fully repaired, the need resulting from the disaster impact will have been fully met; but actual costs to the point of completion are eligible.

Oftentimes, unmet need does not become apparent until after CDBG disaster recovery assistance has been provided. For example, a subsequent storm or disaster may affect the unrepaired house or business of an individual or entity that was previously assisted by CDBG disaster recovery for a prior disaster. Therefore, to the extent that an original disaster recovery need (e.g., rehabilitation of a home) was not fully met, but was exacerbated by other factors beyond the government's and individual's control (e.g., lack of contractor availability or vandalism), additional CDBG disaster recovery assistance can be provided to meet the outstanding need. Grantees have discretion to determine the best way to determine and verify additional or unmet need. Physical inspection and professional appraisals are highly recommended. If a subsequent appraisal demonstrates that the CDBG award is in excess of need, the grantee should evaluate whether a duplication of benefits has occurred or whether the applicant's award should be reduced based upon program eligibility criteria.

V. Example Frameworks for Calculating Disaster Recovery Awards

The tables below illustrate how a grantee may wish to address the process of making disaster recovery awards.

Table 2: Basic Framework for Calculating Disaster Recovery Awards

1. Identify Applicant's Total Need Prior to Any Assistance	\$ 100,000
2. Identify All Potentially Duplicative Assistance	\$ 35,000
3. Deduct Assistance Determined to be Duplicative	\$ 30,000
4. Maximum Eligible Award (Item 1 <i>less</i> Item 3)	\$ 70,000
5. Program Cap (if applicable)	\$ 50,000

6. Final Award (lesser of Items 4 and 5)	\$ 50,000
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Table 2 illustrates a basic way to calculate an award for CDBG disaster recovery—taking into account any duplication of benefit and reducing the award since the total unmet need is greater than the program cap set by the grantee. Table 3, below, uses this basic framework to calculate a CDBG disaster recovery homeowner rehabilitation award:

Table 3: Basic Framework—Homeowner Rehabilitation

1. Identify Applicant's Total Need Prior to Any Assistance (<i>e.g.</i> , rehabilitation cost estimate)	\$ 60,000
2. Identify All Potentially Duplicative Assistance	
a. FEMA Housing Grant (assumes interim housing is eligible use)	
Interim Housing (<i>e.g.</i> , rent).....	5,000
Permanent Housing (<i>e.g.</i> , repair/rehabilitation).....	15,000
b. SBA Loan.....	20,000
c. Insurance (Structure, not Contents).....	15,000
3. Deduct Assistance Determined to be Duplicative	
a. FEMA Housing Grant (assumes interim housing is eligible use)	
Permanent Housing (<i>e.g.</i> , repair/rehabilitation).....	15,000
b. SBA Loan.....	20,000
c. Insurance (Structure, not Contents).....	15,000
4. Maximum Eligible Award (Item 1 <i>less</i> Item 3)	\$ 10,000
5. Program Cap (if applicable)	\$ 50,000
6. Final Award (lesser of Items 4 and 5)	\$ 10,000

A similar method may be used for most programs, so long as Item 1 is reflective of the program, as for example, illustrated in table 4:

Table 4: Basic Framework—Infrastructure

1. Identify Applicant's Total Need Prior to Any Assistance (<i>e.g.</i> , reconstruction cost estimate)	\$ 100,000
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2. Identify All Potentially Duplicative Assistance	
a. Insurance.....50,000	\$ 75,000
b. FEMA Public Assistance Funds for Permanent Work25,000	
3. Deduct Assistance Determined to be Duplicative	\$ 75,000
4. Maximum Eligible Award (Item 1 <i>less</i> Item 3)	\$ 25,000
5. Program Cap (if applicable)	\$ 50,000
6. Final Award (lesser of Items 4 and 5)	\$ 25,000

While tables 2, 3, and 4 illustrate basic ways to calculate a CDBG disaster recovery award taking into account any duplication of benefit, table 5 below considers a scenario in which a CDBG award has already been made, however, additional unmet needs were identified subsequent to the award.

**Table 5: Post-Award Identification of Additional Unmet Need
Homeowner Rehabilitation**

1. Identify Applicant's Total Need Prior to Any Assistance (<i>e.g.</i> , rehabilitation cost estimate)	\$ 60,000
2. Identify All Potentially Duplicative Assistance	
a. FEMA Housing Grant (assumes interim housing is eligible use)	
Interim Housing (<i>e.g.</i> , rent).....5,000	\$ 55,000
Permanent Housing (<i>e.g.</i> , repair/rehabilitation).....15,000	
b. SBA Loan.....20,000	
c. Insurance (Structure, not Contents).....15,000	
3. Deduct Assistance Determined to be Duplicative	
a. FEMA Housing Grant (assumes interim housing is eligible use)	
Permanent Housing (<i>e.g.</i> , repair/rehabilitation).....15,000	\$ 50,000
b. SBA Loan.....20,000	
c. Insurance (Structure, not Contents).....15,000	
4. Initial Award (Item 1 <i>less</i> Item 3)	\$ 10,000
5. Program Cap (if applicable)	\$ 50,000
6. Initial Final Award (lesser of Items 4 and 5)	\$ 10,000

7. Demonstrated Additional Unmet Need (<i>e.g.</i> , one year later) a. Actual cost ultimately greater than initially estimated cost	\$ 5,000
8. Amount Eligible for Additional Award	\$ 5,000
9. Program Cap (if applicable)	\$ 50,000
10. Additional Award (Item 8 if lesser of Items 6 + 8 and Item 9)	\$ 5,000

Please note that in the above example, some type of documentation must substantiate the amount determined by Item 5. That is, the project files should explain why the original CDBG award was insufficient, and/or why additional funds are necessary to complete the activity. In the above example, the cost of materials may have increased or a fraudulent contractor may have performed defective construction. In either case, the grantee has the discretion to determine what documentation is sufficient to demonstrate these events. Ultimately, required documentation depends on each particular fact pattern.

VI. Use of CDBG Funds

A. Use of funds for explicit and eligible purposes. CDBG disaster recovery funds must be used for eligible purposes of the program or activity for which they have been provided. That is, CDBG funds provided for the sole purpose of repairing a home should be used strictly for the repair of that home. They should not be used for any other purpose. Similarly, funds provided to a business for equipment replacement, or structural repair, should be used only for those purposes. While some business assistance programs may provide for-profit entities with working capital, this purpose should be clearly identified from the outset of the program so as not to duplicate other programs or working capital assistance.

B. Treatment of SBA Loans. CDBG disaster recovery funds should not be used to pay down an SBA home or business loan. In cases where initial SBA loan amounts approved based on estimated costs are later determined to be inadequate relative to the actual costs to complete

home repairs or reconstruction, the SBA will consider re-evaluating an applicant's maximum eligibility to explore if additional assistance may be provided. This also applies to recipients of SBA business loans (including loans for working capital). If need remains after all SBA eligibility has been exhausted, supplemental disaster recovery CDBG funds may be used to address that need.

SBA loans are among the federal government's primary and standard forms of disaster assistance. As disaster recovery CDBG funds are provided by Congress through supplemental appropriations only in extraordinary circumstances, these funds are intended to supplement rather than supplant SBA assistance. Grantees may, on rare occasion and in extraordinary circumstances, contend that the payment of SBA loans with disaster recovery CDBG for a beneficiary is justified in keeping with all associate laws and regulations. In such an instance, the grantee should contact its CPD representative for guidance.

VII. Collecting a Duplication

If a potential duplication is discovered after CDBG disaster recovery assistance has been provided, the grantee may reassess need at that time. If additional need is not demonstrated, disaster recovery funds should be recaptured to the extent they are in excess of the need and duplicate other assistance received by the beneficiary for the same purpose. However, it may depend on what funds were provided last.

Under the Stafford Act, a federal agency that provides duplicative funds must collect those funds. FEMA regulations at 44 CFR 206.191 set forth a hierarchy of delivery that determines the order in which beneficiaries should receive federal assistance. This hierarchy is based on which agency has the primary responsibility for providing assistance following a disaster, not which agency actually delivers the assistance first. As an example, in most

situations, FEMA and SBA assistance is provided to individuals before supplemental disaster recovery CDBG assistance is able to be delivered. However, there may be cases in which, prior to receiving FEMA or SBA assistance, an applicant receives CDBG assistance for a purpose for which they are FEMA/SBA eligible. In this latter case, subject to the agreement that the grantee should have in place with the applicant, the applicant should reimburse the grantee in an amount equal to all duplicative FEMA or SBA funds subsequently received for purposes which CDBG funds were initially used.

The regulations at 44 CFR 206.191(d) explain that a duplication of benefits occurs when an agency provides assistance which was the primary responsibility of another agency, and the agency with primary responsibility later provides assistance. When the delivery sequence has been disrupted, the disrupting agency is responsible for rectifying the duplication.

Since CDBG disaster recovery provides long-term recovery assistance via supplemental congressional appropriations, and falls lower in the hierarchy of delivery than FEMA or SBA assistance, it is intended to supplement rather than supplant these sources of assistance. If CDBG disaster recovery funds or non-federal funds were provided last and unknowingly create a duplication, the method of recapturing the CDBG funds, and the timeframe, are the responsibility of the grantee. HUD has no set guidelines or regulations for this process. However, the recapture method and timeframe should be consistent with OMB Circular A-87 (2 CFR part 225) or other applicable cost principles, any relevant guidance or handbook issued by the HUD Office of the Inspector General, and the Stafford Act, which requires that duplicative assistance shall be collected in accordance with chapter 37 of title 31, relating to debt collection. HUD's CPD representatives are available to provide guidance to grantees setting up or revising their duplication of benefits policies and procedures.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.218; 14.228.

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD

Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: November 4, 2011

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